

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1479 of 1998

AND

CRIMINAL MISC.APPLICATION No. 3447 of 1998.

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

SHAILESHKUMAR JAYANTILAL

MANDAVIWALA

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioners

MR. PB BHATT AND MR. S.R.DIVETIA LEARNED

PUBLIC PROSECUTOR for Respondent No. 1.

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/12/98

ORAL JUDGEMENT

1. Heard learned advocate Mr. P.B. Majmudar for the petitioners and the learned APPs Messars P.B. Bhatt

& S.R. Divetia for the respondent-State.

2. These two applications u/Sec. 482 CrPC have been preferred by the concerned accused and seek to quash the complaints lodged against them before the learned Judicial Magistrate First Class, Surat and registered as Criminal Case No. 23/94 and Inquiry Case No. 3/96, respectively. It appears that the accused in Criminal Case NO. 23/94 are the father and two sons while the accused in Inquiry Case No. 3/96 is the third son of the accused No. 2 in Criminal Case No. 23/94. The complainant in both the complaints are the brothers of the accused No. 2 in Criminal Case NO. 23/94. The complaints appear to be that the accused have forged powers of attorney in the name of the respective complainant in their favour and have disposed of immovable properties belonging to the complainants for pecuniary benefit. Further, the accused have instituted Civil Suits against the complainants on the basis of such forged documents. The accused are thus alleged to have committed offences punishable under Secs. 465, 469, 468 and 147 IPC.

3. Learned Advocate Mr. Majmudar has contended that the accused and the complainants all are close relatives and the disputes are in respect of immovable properties which essentially are of Civil nature. Further, the documents in respect of which the offence is alleged to have been committed are the subject matter of the civil proceedings i.e. RCS NO. 2811/94 and RCS No. 1178/95. It is, therefore, argued that in view of the provisions contained in Sec. 195 [1] [b] [ii] of CrPC, the complaint at the instance of the private person would not be maintainable. It is submitted that Sec. 195 expressly debars the Court from taking cognizance of such offence except on the complaint in writing of that Court or of some other court to which that court is subordinate. The complaints in question, therefore, are not maintainable and require to be quashed. Reliance is placed on the judgement in the matter of Kaunteye Gaurangbhai Nimaksari and Anr. Vs.State of Gujarat and Anr. [1996 [2] GLH [UJ] 33.]

4. The applications are contested by Mr. Marshal. He has submitted that the offence in respect of documents in question is committed long before the institution of the Civil Proceedings and in such case, the bar provided in Sec. 195 CrPC would not be attracted. In support of his contention, he has relied upon the judgement of the Supreme Court in the matter of Sachida Nand Singh and Anr. Vs. State of Bihar and Anr. [1998 [2] S.C.C.

493] and of Mahadev Bapuji Mahajan and Anr. Vs. State of Maharashtra [AIR 1994 Supreme Court, 1549].

5. Having perused the complaints lodged against the present applicants, it prima facie does appear that the offence as alleged has been made out against the accused. Even if the dispute in question is of civil nature the act of commission alleged against the accused does involve a criminal wrong also, and in such circumstances, the complaints would be maintainable. In the matter of Gaurangbhai Nimaksari and Anr. [Supra] This Court has discussed the circumstances in which the Court would be justified in quashing a complaint. However on facts, the present cases do not appear to fall within either of the exceptions enumerated in the aforesaid judgement. The contention that the complaints are not maintainable in view of the express bar contained in Sec. 195 CrPC also requires to be rejected. The matter has been put at rest by the Hon'ble Supreme Court in its abovereferred judgement in the matter of Sachidanand Singh [Supra], the Court has categorically held ;

'That the bar contained in Sec. 195 [1]

[b] [ii] of the Code is not applicable to a case where forgery of document was committed before the documents were produced in the court ".

The same view has been expressed by the Hon'ble Supreme Court in its earlier judgement in the matter of Mahadev Bapuji [supra].

6. The applications are, therefore, dismissed., Rule NISI issued in each of the applications, is discharged. Interim Relief is vacated.

Sd/-

Date : 16-12-1998. [Miss. R.M. Doshit, J.]

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